MARITIME WORKERS UNDER STATE COMPENSATION ACTS.—In *Southern Pacific Co.* v. *Jensen*,[1] the Supreme Court decided that the Workmen's Compensation Law of New York could not be invoked to aid the widow of a longshoreman killed while doing work "of a maritime nature" upon a vessel berthed in New York harbor. The Judicial Code, §§ 24 and 256, at that time gave Federal Courts original and exclusive jurisdiction "of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common law remedy, where the common law is competent to give it." And the Supreme Court held that relief under a Workmen's Compensation Act was not a remedy known at common law, such as to be included in the saving clause.[2]

With a view to overcoming the effect of this decision, Congress soon thereafter amended the Judicial Code by adding to the saving clause, "and to claimants the rights and remedies under the workmen's compensation law of any State."[3] In the recent case of *Knickerbocker Ice Co.* v. *Stewart* (May 17, 1920, No. 543, Oct. T., 1919), faced squarely by the substantive question, the Supreme Court held that this amendment was beyond the powers of Congress. The five justices in the majority, speaking through Justice McReynolds, expressed the view that the Constitution itself adopted certain "approved rules of the general maritime law and empowered Congress to legislate in respect of them"; but that Congress had no power to contravene the purpose of the grant, which was to establish and preserve harmonious and uniform rules throughout the Union. Justice Holmes, for the minority, denied that the Constitution prescribed such uniformity in maritime law; and took the narrower position that Federal legislation may incorporate state laws, thereby "making widely different arrangements for widely different localities."[4]

The power of Congress to legislate in maritime matters is said sometimes to be derived from Article III § 2, of the Constitution, extending the judicial power to admiralty and maritime causes, and Article 1 § 8, authorizing Congress to effectuate by necessary and proper legislation the powers conferred on other branches of the Government.[5] The power seems as truly to be based in the commerce clause of the Constitution;[6] and the history of that clause may furnish some illuminating analogies.

Thus of many subjects within the scope of the commerce clause it has been held that in the absence of the exercise of its power by Congress, the field is left open to state regulation, both of interstate[7]

---

[1](1917) 244 U. S. 205, 37 Sup. Ct. 524.

[2]This phase of the decision is discussed in 17 Columbia Law Rev. 703.

[3]Act of Oct. 6, 1917, c. 97; 40 Stat. 395; U. S. Comp. Stat. (Supp. 1919) §§ 991(3), 1233.

[4]Citing United States *v.* Press Publishing Co. (1911) 219 U. S. 1, 9, 31 Sup. Ct. 212; Clark Distilling Co. *v.* Western Maryland Ry. (1916) 242 U. S. 311, 325, 37 Sup. Ct. 180.

[5]Southern Pacific Ry. *v.* Jensen, *supra*, footnote 1, at p. 214; The Hamilton (1907) 207 U. S. 398, 404, 28 Sup. Ct. 133.

[6]"Congress undoubtedly has authority under the commercial power, if no other, to introduce such changes as are likely to be needed. The scope of the maritime law, and that of commercial regulations are not coterminous, it is true, but the latter embraces much the largest portion of ground covered by the former." The Lottawanna (1874) 88 U. S. 558, 577.

[7]The Minnesota Rate Cases (1912) 230 U. S. 352, 402, 33 Sup. Ct. 729.

and foreign commerce.[8] On the other hand, it is held that there is such necessity for uniformity of law in certain phases of commerce that the absence of Federal legislation must indicate that Congress desires no regulation whatever. This likewise is said both of interstate[9] and foreign commerce.[10] The *Jensen* case and the instant case show a marked tendency to place maritime law generally in the second category. The Courts seem to find implicit in Article III § 2 of the Constitution the purpose of the framers of that instrument to embody in the national law the general maritime law.[11] In the principal case this doctrine is carried one step further. A rule of uniformity is announced which is binding upon Congress itself. It is maintained not only that the Constitution implies a general system of maritime law, but also that it requires Congress to preserve that uniformity.

To read into this clause of the Constitution so mechanical a requirement of uniformity seems, in the words of Justice Holmes, "extravagant."[12] It would perhaps be more profitable to recognize the factual sources of our maritime law. A leading case speaks significantly of the "reception" of continental maritime law in this country,[13]—analogous to the reception of the Roman law in Europe. We may admit constitutional implications,[14] and still recognize that by this process of reception the courts themselves have established the general maritime law as the basis of our national law.[15] That the courts have sometimes

---

[8]Cooley *v.* Board of Wardens (1851) 53 U. S. 299 (local pilotage law upheld); The Hamilton, *supra,* footnote 5 (state law permitting damages for death by tort applied to maritime case in state court).

[9]Bowman *v.* Chicago & N. W. Ry. (1887) 125 U. S. 465, 507, 8 Sup. Ct. 689, 1062 (state law forbidding importation of liquor held invalid).

[10]The Roanoke (1903) 189 U. S. 185, 23 Sup. Ct. 491 (state law imposing maritime lien held invalid); Southern Pacific Co. *v.* Jensen, *supra,* footnote 1.

[11]The Lottawanna, *supra,* footnote 6, at p. 574; Southern Pacific Co. *v.* Jensen, *supra.* That the fathers of the Constitution contemplated a uniform body of maritime law, just as they assumed a Law of Nations, may be gathered from the Federalist, No. 80: "The most bigoted idolizers of state authority, have not thus far shown a disposition to deny the national judiciary the cognizance of maritime causes. These so generally depend on the laws of nations, and so commonly affect the rights of foreigners, that they fall within the considerations which are relative to the public peace."

[12]"I do not suppose that anyone would say that the words 'The judicial Power shall extend . . . to all cases of admiralty and maritime Jurisdiction,' Const., Art. III, Sect. 3, by implication enacted a whole code for master and servant at sea, that could be modified only by constitutional amendment".

[13]The Lottawanna, *supra,* footnote 6, at pp. 573, 576.

[14]"The laws of Wisbuy . . . with those of Oleron now form the basis of the Maritime Codes of Europe and in some degree are supposed to be adopted by the Constitution of the United States". *Ex parte* Pool (1821) 2 Va. Cas. 275, 282; and see The Osceola (1903) 189 U. S. 158, 168, 23 Sup. Ct. 483.

[15]While asserting the supremacy of the courts in the reception of maritime law, Bradley, *J.,* still insists upon the fiction that "the court cannot make the law, it can only declare it." The Lottawanna, *supra,* at p. 577.

departed from the settled laws of the sea and indulged in startling judicial legislation,[16] lends support to the view that it is the courts that are responsible for our maritime law.

Neverthless, unquestionably the general maritime rules have become part of our national law. And viewed either as a matter of international relations or of a national shipping policy, there is every reason for preserving a high degree of uniformity in the maritime law. It is for this reason that the decision in the instant case is probably on the safer side of the tenuous line which limits legislation on questions of maritime jurisdiction, despite the precedents which exist for Federal laws which adopt the laws of the several states,[17] and the leading cases supporting state legislation which disregard the need for uniformity.[18]

That the present amendment fails to accomplish its purpose of allowing longshoremen their remedies under state compensation laws may only be ascribed to careless drafting. A more clumsy method of changing the substantive law could hardly be contrived than that attempted here,—by a clause amending the judicial code on a point of jurisdiction.[19] It would seem that there are two methods of bringing longshoremen under a compensation law. The first and simplest is to enact a federal maritime compensation law. The other is to change by legislation the rule formulated in a recent case[20] that longshoremen are subject to maritime jurisdiction only. Such a limitation is within the doctrine of *In re Rahrer*[21] and is probably supportable as a reasonable classification. For the necessity for uniformity is not so clearly apparent where longshoremen and other port workers are concerned, as in the general laws of the sea.

THE "DEDICATION" AND USES OF PARKS.—Judge Dillon, in concluding his discussion of dedication, permits himself to "stop pausefully for a moment to note how impressively the doctrines of our jurisprudence concerning it illustrate their thorough and complete adaptation to the wants and exigencies of civilized society."[1] The public right in squares and parks is an interest which the courts have most valorously striven to defend; but the rationalizations by which they have served this end are more curious than impressive. The history of our parks and their preservation from encroachment shows how quick law is to meet social needs, but how ponderously the doctrines of jurisprudence follow after.

---

[16]The Osceola, *supra*, footnote 14, at p. 175; Workman *v.* City of New York (1900) 179 U. S. 552, 586, 21 Sup. Ct. 212.

[17]See *supra*, footnote 4.

[18]Steamboat Co. *v.* Chase (1872) 83 U. S. 522; The Hamilton, *supra*; The Lottawanna, *supra*; Cooley *v.* Board of Wardens, *supra*.

[19]"Mere reservation of partially concurrent cognizance to State courts by an act of Congress conferring an otherwise exclusive jurisdiction upon national courts, could not create substantive rights or obligations." McReynolds, *J.*, in the principal case.

[20]Atlantic Trans. Co. *v.* Imbrovek (1914) 234 U. S. 52, 34 Sup. Ct. 733.

[21]*In re* Rahrer (1891) 140 U. S. 545, 11 Sup. Ct. 865, which upheld a liquor law enacting that immediately upon arrival in a state, interstate liquor shipments should be subject to state law. A distinction was made between delegating federal powers and "removing an impediment to state jurisdictions."

[1]3 Dillon, Municipal Corporations (5th ed., 1911) § 1107.